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No.: ICC-01/05-01/08

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TRIAL CHAMBER III

Before: Judge Joyce Aluoch, Presiding Judge
Judge Geoffrey Henderson
Judge Chang-ho Chung

**SITUATION IN THE CENTRAL AFRICAN REPUBLIC
IN THE CASE OF
THE PROSECUTOR
V. JEAN-PIERRE BEMBA GOMBO**

Public Redacted Document

**Public redacted version of "Prosecution's Application for an Inquiry related to
Witness 0045", 7 November 2008, ICC-01/05-01/08-217-Conf**

Source: The Office of the Prosecutor

Document to be notified in accordance with regulation 31 of the Regulations of the Court to:

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I. Procedural History

1. On 31 August 2008, the Single Judge on behalf of the Pre-Trial-Chamber III (hereinafter referred to as the “Chamber”), issued the “First decision on the Prosecutor’s request for redactions”¹ (hereinafter referred to as the “First Decision”) and, *inter alia*, requested the Defence to keep the information disclosed confidential and to ensure that it is not passed on to the public.²

2. On 22 September 2008, the Single Judge on behalf of the Chamber, rendered a decision entitled “Décision sur la surveillance des communications non-privilégiées de Jean-Pierre Bemba Gombo”³ ordering that the Registry put under surveillance the non-privileged telephone communication of Mr. Bemba and to regularly report to the Chamber and the Prosecutor on any issue related to the protection of witnesses. That same day, the Chamber recalled that the Defence was requested to keep disclosed information confidential and ensure that it is not passed on to the public, unless otherwise ordered.⁴

3. On 22 September 2008, the Office of the Prosecutor (hereinafter referred to as the “Prosecution”) filed on an *ex parte*, under seal basis the “Prosecutor’s Amended Application for Proposed Redactions Pursuant to Rules 81(2) and 81(4)” (hereinafter referred to as the “Redactions Filing”) which requested, *inter alia*, the regulation of witness contact.⁵

¹ ICC-01/05-01/08-85-Conf

² See page 16, letter (c), ICC-01/05-01/08-85-Conf

³ ICC-01/05-01/08-118-Conf

⁴ See “Décision sur la Requête du Procureur du 5 septembre 2008”, paragraph 10, ICC-01/05-01/08-117-Conf

⁵ ICC-01/05-01/08-114-Conf-Exp. While this filing was under seal and *ex parte*, the Prosecution has cited it here because the Chamber has ruled that “the making of such references in the present decision is required by the principle of fairness of proceedings for the defence, and [the Chamber] considers that it is not inconsistent with the nature of the documents referred to”: see paragraph 2, ICC-01/05-01/08-134-Conf and footnotes to this application therein.

4. On 1 October 2008, the Chamber issued its “Decision on the Prosecutor’s request for the regulation of contacts of Jean-Pierre Bemba Gombo” whereby it held that the Prosecution’s application was not sufficiently substantiated⁶ and found that “preventing the defence team ‘to contact directly or indirectly (...) witnesses except through the Office of the Prosecutor, should the witness consent to such contact’ would be an order violating the basic rights of the defence to examine the witnesses and thus be able to have access to them”.⁷ In that decision, the Chamber recalled its decisions of 31 August 2008 and 22 September 2008⁸ and found that, after referring to articles 8(4) and 8(3) of the Code of Professional Conduct for counsel (hereinafter referred to as the “Code”)⁹, “the defence team composed of professional counsels respecting secrecy and confidentiality is well aware of its obligations”.¹⁰

5. On 1 October 2008, the PTC III issued the “Second Decision on the Prosecutor’s requests for redactions” (hereinafter referred to as the “Second Decision”) where it, *inter alia*, denied the Prosecution’s redaction request in relation to Witness 0015.¹¹

6. On 1 October 2008, the Prosecution filed, *inter alia*, the Document Containing the Charges and the List of Evidence¹² containing the names of Witnesses 0015 and 0045.

7. On 16 October 2008, the Prosecution filed the “Prosecutor’s Application for an Inquiry and the Issuance of Comprehensive Guidelines under Articles 57(3)(c) and 68 of the Rome Statute, Rules 87 and 88 of the Rules of Procedure and Evidence”¹³ in

⁶ Paragraphs 17, 30 and 32, ICC-01/05-01/08-134-Conf

⁷ Paragraph 29, ICC-01/05-01/08-134-Conf.

⁸ Paragraphs 19 and 25, ICC-01/05-01/08-134-Conf.

⁹ Paragraphs 20 and 22, ICC-01/05-01/08-134-Conf.

¹⁰ Paragraph 20, ICC-01/05-01/08-134-Conf.

¹¹ ICC-01/05-01/08-135-Conf, paragraph 10.

¹² ICC-01/05-01/08-129 and ICC-01/05-01/08-US-Exp-129-Anxs 1.A to 1.D and ICC-01/05-01/08-Conf-Exp-129-Anx 2.A to 2.D respectively.

¹³ ICC-01/05-01/08-162-Conf.

relation to an alleged breach of confidentiality relating to witness 0037, that is not the subject of this application.

8. On the 28 October 2008, the Defence filed “Observations de la Défense sur la Requête du Procureur intitulée: “Prosecutor’s Application for an Inquiry and the Issuance of Comprehensive Guidelines under Articles 57(3)(c) and 68 of the Statute, rules 87 and 88 of the Rules of Procedure and Evidence” (hereinafter referred to as the “Defence Observations”) in response in which it, *inter alia*, opposed the application.¹⁴ The PTC III has yet to rule on the issue.

II. Request for Confidentiality

9. The Prosecution requests that this application be received as “Confidential” because it relates to material that is currently treated as confidential.

III. Facts upon which the Submission is Based

10. On 28 October 2008, when two investigators in the Office of the Prosecutor contacted [REDACTED] (hereinafter referred to as “Witness 0045”), Witness 0045 advised them of two recent incidents of concern.

11. Firstly, [REDACTED].

12. [REDACTED].

13. Secondly, [REDACTED].

¹⁴ ICC-01/05-01/08-192-Conf.

14. [REDACTED].

15. [REDACTED].¹⁵

16. The Prosecution informed the Victims and Witnesses Unit (hereinafter referred to as the "VWU") of this incident on 4 November 2008. On the basis of the information provided by the Prosecution, the VWU indicated that given the witness's profile the protection measures in place remained adequate and appropriate.

17. The Prosecution submits that the allegations of Witness 0045 are serious and detailed enough to justify further investigation.

IV. Relief Sought

18. The Prosecution respectfully requests that the Chamber considers opening an inquiry into the circumstances of the release of the said information related to Witness 0045.



Fatou Bensouda, Prosecutor

Dated this 27th Day of July 2016
At The Hague, The Netherlands

¹⁵ ICC-01/05-01/08-200-Conf, Anx 2.